

**Introduced by Senator Berryhill**

February 22, 2013

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An act to amend Sections 6011 and 6012 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 732, as introduced, Berryhill. Sales and use taxes: exclusion: trade-in motor vehicle.

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption of tangible personal property purchased from a retailer for the storage, use, or other consumption in this state measured by sales price. That law defines the terms “gross receipts” and “sales price.”

This bill would exclude from the terms “gross receipts” and “sales price” the value of a motor vehicle traded in for a new motor vehicle, including a new motorcycle, if the value of the trade-in motor vehicle is separately stated on the new motor vehicle invoice or bill of sale or similar document provided to the purchaser.

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Amendments to the Sales and Use Tax Law are incorporated into these laws.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

This bill would take effect immediately as a tax levy, but its operative date would depend on its effective date.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 6011 of the Revenue and Taxation Code  
2     is amended to read:  
3     6011. (a) “Sales price” means the total amount for which  
4     tangible personal property is sold or leased or rented, as the case  
5     may be, valued in money, whether paid in money or otherwise,  
6     without any deduction on account of any of the following:  
7         (1) The cost of the property sold.  
8         (2) The cost of materials used, labor or service cost, interest  
9     charged, losses, or any other expenses.  
10        (3) The cost of transportation of the property, except as excluded  
11     by other provisions of this section.  
12     (b) The total amount for which the property is sold or leased or  
13     rented includes all of the following:  
14         (1) Any services that are a part of the sale.  
15         (2) Any amount for which credit is given to the purchaser by  
16     the seller.  
17         (3) The amount of any tax imposed by the United States upon  
18     producers and importers of gasoline and the amount of any tax  
19     imposed pursuant to Part 2 (commencing with Section 7301) of  
20     this division.  
21     (c) “Sales price” does not include any of the following:  
22         (1) Cash discounts allowed and taken on sales.  
23         (2) The amount charged for property returned by customers  
24     when that entire amount is refunded either in cash or credit, but  
25     this exclusion shall not apply in any instance when the customer,  
26     in order to obtain the refund, is required to purchase other property  
27     at a price greater than the amount charged for the property that is  
28     returned. For the purpose of this section, refund or credit of the  
29     entire amount shall be deemed to be given when the purchase price

1 less rehandling and restocking costs are refunded or credited to  
2 the customer. The amount withheld for rehandling and restocking  
3 costs may be a percentage of the sales price determined by the  
4 average cost of rehandling and restocking returned merchandise  
5 during the previous accounting cycle.

6 (3) The amount charged for labor or services rendered in  
7 installing or applying the property sold.

8 (4) (A) The amount of any tax (not including, however, any  
9 manufacturers' or importers' excise tax, except as provided in  
10 subparagraph (B)) imposed by the United States upon or with  
11 respect to retail sales whether imposed upon the retailer or the  
12 consumer.

13 (B) The amount of manufacturers' or importers' excise tax  
14 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
15 Code for which the purchaser certifies that he or she is entitled to  
16 either a direct refund or credit against his or her income tax for  
17 the federal excise tax paid or for which the purchaser issues a  
18 certificate pursuant to Section 6245.5.

19 (5) The amount of any tax imposed by any city, county, city  
20 and county, or rapid transit district within the State of California  
21 upon or with respect to retail sales of tangible personal property,  
22 measured by a stated percentage of sales price or gross receipts,  
23 whether imposed upon the retailer or the consumer.

24 (6) The amount of any tax imposed by any city, county, city  
25 and county, or rapid transit district within the State of California  
26 with respect to the storage, use or other consumption in that city,  
27 county, city and county, or rapid transit district of tangible personal  
28 property measured by a stated percentage of sales price or purchase  
29 price, whether the tax is imposed upon the retailer or the consumer.

30 (7) Separately stated charges for transportation from the  
31 retailer's place of business or other point from which shipment is  
32 made directly to the purchaser, but the exclusion shall not exceed  
33 a reasonable charge for transportation by facilities of the retailer  
34 or the cost to the retailer of transportation by other than facilities  
35 of the retailer. However, if the transportation is by facilities of the  
36 retailer, or the property is sold for a delivered price, this exclusion  
37 shall be applicable solely with respect to transportation which  
38 occurs after the purchase of the property is made.

39 (8) Charges for transporting landfill from an excavation site to  
40 a site specified by the purchaser, either if the charge is separately

1 stated and does not exceed a reasonable charge or if the entire  
2 consideration consists of payment for transportation.

3 (9) The amount of any motor vehicle, mobilehome, or  
4 commercial coach fee or tax imposed by and paid to the State of  
5 California that has been added to or is measured by a stated  
6 percentage of the sales or purchase price of a motor vehicle,  
7 mobilehome, or commercial coach.

8 (10) (A) The amount charged for intangible personal property  
9 transferred with tangible personal property in any technology  
10 transfer agreement, if the technology transfer agreement separately  
11 states a reasonable price for the tangible personal property.

12 (B) If the technology transfer agreement does not separately  
13 state a price for the tangible personal property, and the tangible  
14 personal property or like tangible personal property has been  
15 previously sold or leased, or offered for sale or lease, to third  
16 parties at a separate price, the price at which the tangible personal  
17 property was sold, leased, or offered to third parties shall be used  
18 to establish the retail fair market value of the tangible personal  
19 property subject to tax. The remaining amount charged under the  
20 technology transfer agreement is for the intangible personal  
21 property transferred.

22 (C) If the technology transfer agreement does not separately  
23 state a price for the tangible personal property, and the tangible  
24 personal property or like tangible personal property has not been  
25 previously sold or leased, or offered for sale or lease, to third  
26 parties at a separate price, the retail fair market value shall be equal  
27 to 200 percent of the cost of materials and labor used to produce  
28 the tangible personal property subject to tax. The remaining amount  
29 charged under the technology transfer agreement is for the  
30 intangible personal property transferred.

31 (D) For purposes of this paragraph, “technology transfer  
32 agreement” means any agreement under which a person who holds  
33 a patent or copyright interest assigns or licenses to another person  
34 the right to make and sell a product or to use a process that is  
35 subject to the patent or copyright interest.

36 (11) The amount of any tax imposed upon diesel fuel pursuant  
37 to Part 31 (commencing with Section 60001).

38 (12) (A) The amount of tax imposed by any Indian tribe within  
39 the State of California with respect to a retail sale of tangible  
40 personal property measured by a stated percentage of the sales or

1 purchase price, whether the tax is imposed upon the retailer or the  
2 consumer.

3 (B) The exclusion authorized by subparagraph (A) shall only  
4 apply to those retailers who are in substantial compliance with this  
5 part.

6 *(13) The value of a motor vehicle traded in for a new motor*  
7 *vehicle, including a new motorcycle, if the value of the trade-in*  
8 *motor vehicle is separately stated on the new motor vehicle invoice*  
9 *or bill of sale or similar document provided to the purchaser.*

10 SEC. 2. Section 6012 of the Revenue and Taxation Code is  
11 amended to read:

12 6012. (a) “Gross receipts” mean the total amount of the sale  
13 or lease or rental price, as the case may be, of the retail sales of  
14 retailers, valued in money, whether received in money or otherwise,  
15 without any deduction on account of any of the following:

16 (1) The cost of the property sold. However, in accordance with  
17 any rules and regulations as the board may prescribe, a deduction  
18 may be taken if the retailer has purchased property for some other  
19 purpose than resale, has reimbursed his or her vendor for tax which  
20 the vendor is required to pay to the state or has paid the use tax  
21 with respect to the property, and has resold the property prior to  
22 making any use of the property other than retention, demonstration,  
23 or display while holding it for sale in the regular course of business.  
24 If that deduction is taken by the retailer, no refund or credit will  
25 be allowed to his or her vendor with respect to the sale of the  
26 property.

27 (2) The cost of the materials used, labor or service cost, interest  
28 paid, losses, or any other expense.

29 (3) The cost of transportation of the property, except as excluded  
30 by other provisions of this section.

31 (4) The amount of any tax imposed by the United States upon  
32 producers and importers of gasoline and the amount of any tax  
33 imposed pursuant to Part 2 (commencing with Section 7301) of  
34 this division.

35 (b) The total amount of the sale or lease or rental price includes  
36 all of the following:

37 (1) Any services that are a part of the sale.

38 (2) All receipts, cash, credits and property of any kind.

39 (3) Any amount for which credit is allowed by the seller to the  
40 purchaser.

1 (c) “Gross receipts” do not include any of the following:

2 (1) Cash discounts allowed and taken on sales.

3 (2) Sale price of property returned by customers when that entire  
4 amount is refunded either in cash or credit, but this exclusion shall  
5 not apply in any instance when the customer, in order to obtain  
6 the refund, is required to purchase other property at a price greater  
7 than the amount charged for the property that is returned. For the  
8 purpose of this section, refund or credit of the entire amount shall  
9 be deemed to be given when the purchase price less rehandling  
10 and restocking costs are refunded or credited to the customer. The  
11 amount withheld for rehandling and restocking costs may be a  
12 percentage of the sales price determined by the average cost of  
13 rehandling and restocking returned merchandise during the  
14 previous accounting cycle.

15 (3) The price received for labor or services used in installing or  
16 applying the property sold.

17 (4) (A) The amount of any tax (not including, however, any  
18 manufacturers’ or importers’ excise tax, except as provided in  
19 subparagraph (B)) imposed by the United States upon or with  
20 respect to retail sales whether imposed upon the retailer or the  
21 consumer.

22 (B) The amount of manufacturers’ or importers’ excise tax  
23 imposed pursuant to Section 4081 or 4091 of the Internal Revenue  
24 Code for which the purchaser certifies that he or she is entitled to  
25 either a direct refund or credit against his or her income tax for  
26 the federal excise tax paid or for which the purchaser issues a  
27 certificate pursuant to Section 6245.5.

28 (5) The amount of any tax imposed by any city, county, city  
29 and county, or rapid transit district within the State of California  
30 upon or with respect to retail sales of tangible personal property  
31 measured by a stated percentage of sales price or gross receipts  
32 whether imposed upon the retailer or the consumer.

33 (6) The amount of any tax imposed by any city, county, city  
34 and county, or rapid transit district within the State of California  
35 with respect to the storage, use or other consumption in that city,  
36 county, city and county, or rapid transit district of tangible personal  
37 property measured by a stated percentage of sales price or purchase  
38 price, whether the tax is imposed upon the retailer or the consumer.

39 (7) Separately stated charges for transportation from the  
40 retailer’s place of business or other point from which shipment is

1 made directly to the purchaser, but the exclusion shall not exceed  
2 a reasonable charge for transportation by facilities of the retailer  
3 or the cost to the retailer of transportation by other than facilities  
4 of the retailer. However, if the transportation is by facilities of the  
5 retailer, or the property is sold for a delivered price, this exclusion  
6 shall be applicable solely with respect to transportation which  
7 occurs after the sale of the property is made to the purchaser.

8 (8) Charges for transporting landfill from an excavation site to  
9 a site specified by the purchaser, either if the charge is separately  
10 stated and does not exceed a reasonable charge or if the entire  
11 consideration consists of payment for transportation.

12 (9) The amount of any motor vehicle, mobilehome, or  
13 commercial coach fee or tax imposed by and paid to the State of  
14 California that has been added to or is measured by a stated  
15 percentage of the sales or purchase price of a motor vehicle,  
16 mobilehome, or commercial coach.

17 (10) (A) The amount charged for intangible personal property  
18 transferred with tangible personal property in any technology  
19 transfer agreement, if the technology transfer agreement separately  
20 states a reasonable price for the tangible personal property.

21 (B) If the technology transfer agreement does not separately  
22 state a price for the tangible personal property, and the tangible  
23 personal property or like tangible personal property has been  
24 previously sold or leased, or offered for sale or lease, to third  
25 parties at a separate price, the price at which the tangible personal  
26 property was sold, leased, or offered to third parties shall be used  
27 to establish the retail fair market value of the tangible personal  
28 property subject to tax. The remaining amount charged under the  
29 technology transfer agreement is for the intangible personal  
30 property transferred.

31 (C) If the technology transfer agreement does not separately  
32 state a price for the tangible personal property, and the tangible  
33 personal property or like tangible personal property has not been  
34 previously sold or leased, or offered for sale or lease, to third  
35 parties at a separate price, the retail fair market value shall be equal  
36 to 200 percent of the cost of materials and labor used to produce  
37 the tangible personal property subject to tax. The remaining amount  
38 charged under the technology transfer agreement is for the  
39 intangible personal property transferred.

1 (D) For purposes of this paragraph, “technology transfer  
2 agreement” means any agreement under which a person who holds  
3 a patent or copyright interest assigns or licenses to another person  
4 the right to make and sell a product or to use a process that is  
5 subject to the patent or copyright interest.

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7 to Part 31 (commencing with Section 60001).

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9 the State of California with respect to a retail sale of tangible  
10 personal property measured by a stated percentage of the sales or  
11 purchase price, whether the tax is imposed upon the retailer or the  
12 consumer.

13 (B) The exclusion authorized by subparagraph (A) shall only  
14 apply to those retailers who are in substantial compliance with this  
15 part.

16 *(13) The value of a motor vehicle traded in for a new motor*  
17 *vehicle, including a new motorcycle, if the value of the trade-in*  
18 *motor vehicle is separately stated on the new motor vehicle invoice*  
19 *or bill of sale or similar document provided to the purchaser.*

20 For purposes of the sales tax, if the retailers establish to the  
21 satisfaction of the board that the sales tax has been added to the  
22 total amount of the sale price and has not been absorbed by them,  
23 the total amount of the sale price shall be deemed to be the amount  
24 received exclusive of the tax imposed. Section 1656.1 of the Civil  
25 Code shall apply in determining whether or not the retailers have  
26 absorbed the sales tax.

27 SEC. 3. Notwithstanding Section 2230 of the Revenue and  
28 Taxation Code, no appropriation is made by this act and the state  
29 shall not reimburse any local agency for any sales and use tax  
30 revenues lost by it under this act.

31 SEC. 4. This act provides for a tax levy within the meaning  
32 of Article IV of the Constitution and shall go into immediate effect.  
33 However, the provisions of this act shall become operative on the  
34 first day of the first calendar quarter commencing more than 90  
35 days after the effective date of this act.